

Regulation of the Marion Board of Health

Restricting the Sale of Tobacco and Nicotine Delivery Products

Section 12:

12.10: Statement of Purpose:



RED: State Law/DPH Regulations
PURPLE: Local BOH Decisions

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat';

~~Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;~~

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin³ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development,⁴ and that it is addiction to nicotine that keeps youth smoking past adolescence.⁵

Whereas a Federal District Court found that Phillip Morris, RJ Reynolds and other leading cigarette manufacturers “spent billions of dollars every year on their marketing activities in order to encourage young people to try and then continue purchasing their cigarette products in order to provide the replacement smokers they need to survive” and that these companies were likely to continue targeting underage smokers;

~~Whereas more than 80 percent of all adult smokers begin smoking before the age of 18, more than 90 percent do so before leaving their teens, and more than 3.5 million middle and high school students smoke;⁶~~

Whereas the majority (90%) of smokers begin smoking before the age of 25, and over 5 million youth and young adults (ages 25 and under) smoke;⁶

~~Whereas the Institute of Medicine (IOM) concludes that raising the minimum age of legal access to tobacco products to 21 will reduce tobacco initiation, particularly among adolescents 15—17, and will improve health across the lifespan and save lives⁷.~~

~~Whereas sales of flavored little cigars increased by 23% between 2008 and 2010⁸ and many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁹~~;

Whereas, cigars and cigarillos, can be sold in a single “dose;” and enjoy a relatively low tax as compared to cigarettes;
Whereas the Surgeon General found that exposure to tobacco marketing in stores and price discounting increase youth smoking;

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects a/Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

³ CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

⁴ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking- 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁵ Health and Human Services. 2014. *The Health Consequences of Smoking-SO Years of Progress: A Report of the Surgeon General*, 2014 U.S. Surgeon General's Report Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, Executive Summary p. 13. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>

⁶ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health and U.S. Department of Health and Human services (HHA). *The Health Consequences of Smoking-50 Years of Progress. A Report of the Surgeon General, 2014*.

⁷ IOM (Institute of Medicine) 2015. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington DC: The National Academies Press, 2015.

⁸ Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

Whereas, the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;

Whereas, the U.S. Surgeon General recognized in his 2014 report that a complementary strategy to assist in eradicating tobacco-related death and disease is for local governments to ban categories of products from retail sale;

~~Whereas the U.S. Centers for Disease Control and Prevention has reported that current electronic cigarette use among middle and high school students tripled from 2013 to 2014;~~⁴⁰

Whereas, ever use of e-cigarettes among students in Massachusetts is 30.9% for high schoolers and 10.9% for middle schools, representing a 20.3% decrease for high schoolers, and a 4.6% decrease for middle schoolers from 2019-2021;

Whereas the Massachusetts Department of Environmental Protection has classified liquid nicotine in any amount as an "acutely hazardous waste" (310-CMR 30.136);

Whereas, the New England Commission on Higher Education requires colleges and universities to maintain a safe and healthy environment for students, which is incompatible with the sale of tobacco and nicotine products;

Whereas, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day, reduced smoking abstinence during a quit attempt, and increased smoking prevalence among youth;

Whereas, the density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates and initiation of non-cigarette tobacco product use;

~~Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one~~⁴¹;

~~Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days is 10.8% in 2013;~~⁴²

~~Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;~~⁴³

~~Whereas in Massachusetts, youth use of cigars and smokeless tobacco (12.3%) is higher than the rate of current cigarette use (10.7%) for 2013 and has remained elevated since 2009~~⁴⁴;

~~Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%~~⁴⁵;

~~Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;~~

~~Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;~~

⁹ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

¹⁰ Centers for Disease Control & Prevention. 2015. "Tobacco Use Among Middle and High School Students - United States, 2011-2014," *Morbidity and Mortality Weekly Report (MMWR)* 64(14): 381- 385.

⁴¹ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/public/healthfocus/ucm173146.htm>.

^{12 12} CDC (2013) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2014: 63 (No SS-04)). Retrieved from: www.cdc.gov.

¹³ King BA, Tynan MA, Dube SR, et al. 2013. "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students." *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

¹⁴ Commonwealth of Massachusetts, Data Brief, Youth Tobacco Use in Massachusetts: Survey Results from 1993 to 2013.

¹⁵ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, J. Prim. P. 2011, Aug: 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

Whereas, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;

Whereas, policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate social and racial inequities in the location and distribution of tobacco retailers;

Whereas the Massachusetts Supreme Judicial Court has held that " ... [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means"¹⁶.

Now, therefore it is the intention of the Marion Board of Health to regulate the sale of tobacco products.

12.20. Authority:

This regulation is promulgated pursuant to the authority granted to the Marion Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

12.30 Definitions:

Adult-Only Retail Tobacco Store (also known as "Retail Tobacco Store" in G.L.C.270): An establishment that is not adjoined, that has a separate entrance not used by any other retailer, that does not sell food, beverages, or alcohol, that does not have a lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from the Marion Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years or older. The establishment shall not allow anyone under the age of 21 to work at the establishment.

Blunt Wrap: Any tobacco product ~~manufactured or packaged as a wrap or as a hollow tube~~ made wholly or in part from a tobacco product, manufactured or packaged with loose and removable leaves or section of a leaf, or as a hollow tube, that may be used by the consumer to wrap or contain ~~is designed or intended to be filled by the consumer with~~ loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing Flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Child-Resistant Package: Packaging intended to reduce the risk of a child ingesting nicotine and that meets the minimum standards of 16 C.F.R. 1700 *et seq.*, pursuant to 15 U.S.C. 1471 through 1476.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece, that is in a readily usable state immediately when removed from its packaging without any modification, preparation or assembly required as in a kit or roll-your-own package, and is not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1. Tobacco leaf in kits or roll-your-own packages shall be considered "blunt wraps" for the purpose of this regulation.

Component Part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product.

Coupon: Any card, paper, note, form, statement, ticket or other communication distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount price.

Distinguishable: Perceivable by either the sense of smell or taste.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

¹⁶ Druzik et al v. Board of Health of Haverhill, 324 Mass.129 (1949).

Electronic Nicotine Delivery System: An electronic device, whether for one-time use or reusable, that can be used to deliver nicotine or another substance to a person inhaling from the device including, but not limited to, electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, vaping pens, hookah pens and other similar devices that rely on vaporization or aerosolization; provided, however, that “electronic nicotine delivery system” shall also include any noncombustible liquid or gel that is manufactured into a finished product for use in such electronic device; provided further, that “electronic nicotine delivery system” shall also include any component, part or accessory of a device used during the operation of the device even if the part or accessory was sold separately; provided further, that “electronic nicotine delivery system” shall not include a product that has been approved by the United States Food and Drug Administration for the sale of or use as a tobacco cessation product or for other medical purposes and is marketed and sold or prescribed exclusively for that approved purpose.

Employee: Any individual who performs services for an employer.

Flavored Tobacco Product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a Flavored Tobacco Product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Liquid Nicotine Container: A package from which nicotine or other substance in a solution or other form is accessible through normal and foreseeable use by a consumer and that is used to hold a soluble nicotine or other substance in any concentration; provided however, that “liquid nicotine container” shall not include a sealed, prefilled, and disposable container of nicotine or other substance in a solution or other form in which the container is inserted directly into an electronic cigarette, electronic nicotine delivery system or other similar product if the nicotine or other substance in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

Listed or Non-Discounted Price: The higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising, or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the stated price, and before the application of any discounts or coupons.

Manufacturer Documentation: A written document from a manufacturer that certifies which of each of its products are not flavored, as defined under Massachusetts law and these regulations. Manufacturer Documentation shall also mean a written document from a manufacturer that certifies the nicotine content expressed as milligrams per milliliter for each of its Electronic Nicotine Delivery System products.

Minimum Legal Sales Age (MLSA): ~~The age an individual must be before that individual can be sold a tobacco product in the municipality.~~

Nicotine Delivery Product: ~~Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include but are not limited to e-cigarettes.~~

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company, or organization of any kind, including but not limited to, an owner, operator, manager, proprietor, or person in charge of any establishment, business or retail store.

Retailer: A person that operates a retail establishment.

Retail Establishment: A physical place of business or a section of a physical place of business in which a tobacco product is offered for sale to consumers.

Rolling Papers: Sheets, rolls, tubes, cones, wraps, or leaves that do not contain tobacco, which are used for rolling cigarettes either by hand or with a roll-your-own machine. NOTE: This relates to flavor enhancers, see last sentence of Tobacco Product Flavor Enhancer definition. Adding this definition will permit banning flavored non-tobacco, non-nicotine wraps such as hemp wraps.

Self-Service Display: Any display including an unlocked humidor regardless of size from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoking Bar: An establishment that: (i) exclusively occupies an enclosed indoor space and is primarily engaged in the retail sale of tobacco products for consumption by customers on the premises; (ii) derives revenue from the sale of food, alcohol, or other beverages that is incidental to the sale of a tobacco product and prohibits entry to a person under 21 years of age; (iii) prohibits a food or beverage not sold directly by the establishment from being consumed on the premises; (iv) maintains a valid permit for the retail sale of a tobacco product as required to be issued by the Town of Marion; and (v) maintains a valid license issued by the Department of Revenue to operate as a smoking bar. "Smoking Bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars", "hookah bars", and "vape bars".

Tobacco Product Flavor Enhancer: Any product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to any tobacco product. A rolling paper with a characterizing flavor shall be considered a Tobacco Product Flavor Enhancer.

Tobacco Product: Any product containing or made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however that "tobacco product" shall also include any component, or part, or accessory of a tobacco product; and provided further, that "tobacco product" does shall not include any product that has been approved by the United States Food and Drug Administration for the sale of or use either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely exclusively for the approved purpose.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products available, as defined herein.

12.40. Tobacco and Nicotine Delivery Products to Persons Under the Minimum Legal Sales Age Prohibited: No Tobacco and Nicotine Delivery Product Sales to Persons Under Twenty-One (21) Years Old:

1. No person shall sell or provide a tobacco product or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Marion is 21 twenty-one (21) years old.

2. Required Signage

G.L. c. 270, §§ 6 and 6A; (ii) referral information for smoking cessation resources; (iii) a statement that sale of tobacco products, including e-cigarettes, to someone younger than 21 years of age is prohibited; (iv) health warnings associated with using electronic nicotine delivery systems; and (v) except in the case of smoking bars, notice to consumers that the sale of flavored tobacco products are prohibited at all times. Such signage shall be posted conspicuously in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four feet or greater than nine feet from the floor.

b. All smoking bars and adult-only retail tobacco stores shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall state that "No person younger than 21 years old is permitted on the premises at any time."

c. All smoking bars and those adult-only retail tobacco stores that allow for onsite consumption of tobacco products shall post signage, in the form developed and made available by the Massachusetts Department of Public Health, on the exterior of the door providing entrance to the tobacco retail store or smoking bar and such sign shall not be obstructed from view or placed at a height of less than four feet or greater than nine from the bottom of the door. Such signage shall warn persons entering that smoking and vaping may be present on the premises and provide information concerning the health risks associated with secondhand smoke and the use of tobacco products, including electronic nicotine delivery systems.

~~a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6 and 6A, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Marion Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.~~

B. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the **Marion** Board of Health ~~that discloses current referral information about smoking cessation.~~

~~C. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.~~

3. Identification: Each person selling or distributing tobacco products, ~~as defined herein,~~ shall verify the age of the **every** purchaser **of tobacco products** by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. ~~Verification is required for any person under the age of 27.~~

~~4. All retail sales of tobacco products, as defined herein, must be face to face between the seller and the buyer and occur at the permitted location.~~

Each person admitting entrance into a smoking bar or adult-only retail tobacco store shall first verify the age of every person entering by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older.

12.50. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute **or offer for sale** tobacco products, as defined herein, within the Town of Marion without first obtaining a Tobacco Product Sales Permit issued annually by the Marion Board of Health. Only owners of establishments with a permanent, **indoor**, non-mobile location in Marion are eligible to apply for a permit and sell tobacco products, as defined herein, at the specified location in Marion.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Marion regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.
3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued. **Applicant may be asked to provide evidence that a legitimate business transfer or business purchase has taken place.**
4. The fee for a Tobacco Product Sales Permit shall be determined by the **Marion** Board of Health annually.
5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.
6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place. **All required Massachusetts Department of Revenue licenses related to the sale of tobacco products, as defined herein, must also be displayed conspicuously at the retail establishment.**
7. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
8. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation. **Neither the permit holder nor their employees shall interfere with or obstruct an inspection.**
9. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or the permit holder has not satisfied any outstanding permit suspensions.
10. A Tobacco Product Sales Permit will not be renewed if the permit holder has sold a tobacco product to a person under the ~~MLSA (§D-4)~~ **age of 21** three times within the previous permit year and the time period to appeal has expired. The violator may request a hearing in accordance with the Violations section.

8. Maximum Number of Tobacco Product Sales Permits.

[Basic Cap]

- a. At any given time, there shall be no more than **[number (XX)]** Tobacco Product Sales Permits issued in **Marion**. Any permit holder who has failed to renew their permit within thirty (30) days of expiration will be treated as a first-time permit applicant.
- b. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a “first-come, first-served” basis.
- c. Applicants on the waiting list shall be responsible for ensuring up to date contact information has been provided to the [city/town] Board of Health. **[NOTE: This is the “basic” cap. When a town has the maximum number of permittees allowed, a waiting list should be started with the name and contact information of prospective tobacco retailers who are waiting to be contacted when a permit becomes available.]**

[Advance Cap]

- d. As of the effective date of this regulation, any permit surrendered, revoked or not renewed either because a retailer no longer sells tobacco products, as defined herein, or because a retailer closes the retail business, shall be returned to the **Marion** Board of Health and shall be permanently retired by the Board of Health and the total allowable number of Tobacco Product Sales Permits under paragraph (a) shall be reduced by the number of the retired permits.

9. Sale of Business

- a. Notwithstanding a cap on the total number of permits holders, the seller of a business holding a valid tobacco sales permit may transfer said permit to a bona fide purchaser for value of the business, subject to approval by the Board of Health, as required herein.
- b. The purchaser shall apply for the transfer of the permit no later than (30) calendar days after said purchase. The purchase shall not sell tobacco product until the transfer of the permit is approved by the Board of Health; and
- c. All fines and suspensions of the previous owner must be satisfied prior to the sale.

10. Retail Density

- a. A new Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within five hundred (500) feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant's business premises.
- b. A new Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within _____ feet [For example Five Hundred (500), One Thousand (1,000), Two Thousand (2,000)] of an existing retailer with a valid Tobacco Product Sales Permit as measured by a straight line from the nearest point of the property line of the retailer with a valid Tobacco Product Sales Permit to the nearest point of the property line of the site of the applicant's business premises. [Remove this section if the Advance Cap is adopted].
- c. If the purchaser of a business with a valid tobacco sales permit pursuant to Section E. 9 changes the location of the business, the new location shall be subject to the retail density requirements of Section E.10.

Prohibition of Smoking Bars:

Smoking Bars are prohibited in the Town of Marion.

12.60. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar unless such cigar is priced for retail sale at two dollars and ninety cents (\$2.90) or more.
2. No person shall sell or distribute or cause to be sold or distributed any original factory-wrapped package of two or more ~~at least four (4)~~ cigars unless such package is priced for retail sale at ~~\$5.00~~ five dollars and eighty cents (\$5.80) or more.
3. This Section shall not apply to:
 - a. ~~The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.~~
 - b. a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Marion.
4. The Marion Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

Sale of Flavored Tobacco Products Prohibited:

No person, as defined herein, shall possess, hold, keep, sell or distribute or cause to be possessed, held, kept, sold or distributed any flavored tobacco product, as defined herein, or any flavored tobacco product enhancer, as defined herein. Retailers must obtain manufacturer documentation certifying that all products possessed, held, kept, sold or distributed by the retailer do not meet the definition of a flavored tobacco product or tobacco product flavor enhancer (105 CMR 665.010(E)).

I. Nicotine Content in Electronic Nicotine Delivery Systems:

No person shall sell an electronic nicotine delivery system with nicotine content greater than 35 milligrams per milliliter; provided, however, that this subsection shall not apply to adult-only retail tobacco stores or smoking bars. Retailers must obtain manufacturer documentation verifying that all electronic nicotine delivery products possessed, held, kept, sold or distributed by the retailer indicating the nicotine content expressed as milligrams per milliliter for each electronic nicotine delivery system to be sold in the retail establishment (105 CMR 665.010(C)).

12.70. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Marion.

12.80 Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. ~~No means, instruments or devices that allow for the redemption of all tobacco products as defined herein for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.~~ No person shall accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco product, as defined herein, without charge or for less than the listed or non-discounted price; or sell a tobacco product, as defined herein, through any multi-pack discount (ex. "buy-two-get-one-free") if the sale reduces the price of each back to less than the listed or non-discounted price.

12.90. Out-of-Package Sales:

The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person, as defined herein, shall possess, hold, keep, ~~may~~ sell or distribute or cause to be possessed, held, kept, sold or ~~cause to be~~ distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

Permit holders who sell Liquid Nicotine Containers must comply with the provisions of 310 CMR 30.000, Massachusetts Hazardous Waste Regulations.

All permit holders must comply with 940 CMR 21.05 which reads: "It shall be an unfair or deceptive act or practice for any person to sell or distribute nicotine in a liquid or gel substance in Massachusetts after March 15, 2016 unless the liquid or gel product is contained in a child-resistant package that, at a minimum, meets the standard for special packaging as set forth in 15 U.S.C. §§1471 through 1476 and 16 CFR §1700 *et seq.*"

No permit holder shall refill a cartridge that is prefilled with nicotine in a liquid or gel substance and sealed by the manufacturer and not intended to be opened by the consumer or retailer.

12.100 Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked. **Adult-Only Retail Tobacco Stores are exempt from this section.**

12.110 Vending Machines:

All vending machines containing tobacco products, as defined herein, are prohibited.

12.120 Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

12.130 Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Marion shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

12.140 Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Marion shall sell or cause to be sold tobacco products, as defined herein, ~~This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.~~ **Including by any person or retailer on the property of an educational institution.**

Incorporation of State Laws and State Regulations:

1. The sale or distribution of tobacco products, as defined herein, must comply with state statutes including but not limited to those provisions found at G.L. c. 270, §§6, 6A, 7, 28, 29 and G.L. c. 112, §61A.
2. The sale or distribution of tobacco products, as defined herein, must comply with state regulations including but not limited to those provisions found at 940 CMR 21.00, Sale and Distribution of Cigarettes, Smokeless Tobacco Products, and Electronic Smoking Devices in Massachusetts, 940 CMR 22.00 Sale and Distribution of Cigars in Massachusetts; and 105 CMR 665.00, Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems.

12.150. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent ~~and not their employees,~~ to ensure compliance with all sections of this regulation. ~~The violator shall receive:~~ **For violations of the sections of this regulation that incorporate G.L. c. 270, §§6, 28, 29 and 105 CMR 665, the following penalties apply:**

- ~~a. In the case of a first violation, a fine of one hundred dollars (\$100.00).~~
- ~~b. In the case of a second violation within 36 months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.~~
- ~~c. In the case of three or more violations within a 36 month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for fourteen (14) consecutive business days.~~

- a. In the case of a first violation, a fine of one thousand dollars (\$1,000.00) shall be issued and, additionally, if the violation is a sale of a tobacco product to a person under the age of 21, the Tobacco Product Sales Permit shall be suspended per 105 CMR 665.040(d), for **[BOH decision: either state language: "up to 30 consecutive business days" or choose a specific day duration between 1 - 30 consecutive business days.]**
- b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two thousand dollars (\$2,000.00) shall be issued and the Tobacco Product Sales Permit **[shall / may]** be suspended for _____ days **[choose a specific day duration: one (1) to seven (7) or more]** consecutive business days.
- c. In the case of three or more violations within a thirty-six (36)-month period, a fine of five thousand dollars (\$5,000.00) shall be issued and the Tobacco Product Sales Permit **[shall / may]** be suspended for _____ days **[choose a specific day duration: seven (7) days to thirty (30) or more] consecutive business days.**

For violations of all other sections specific to the **Town of Marion**, the violator shall receive:

- a. In the case of a first violation, a fine of one hundred dollars (\$100.00).
- b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit [shall / may] be suspended for seven (7) consecutive business days.
- c. In the case of three or more violations within a thirty-six (36)-month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit [shall / may] be suspended for thirty (30) consecutive business days.

In the case of four violations or repeated, egregious violations of any section of this regulation, as determined by the Board of Health within a thirty-six (36)-month period, the Board of Health shall hold a hearing in accordance with this regulation and, after such hearing may permanently revoke a Tobacco Product Sales Permit.

2. ~~Refusal~~ **Failure** to cooperate ~~or interference~~ with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.

3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while ~~his or her~~ **their** permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days. **Multiple suspensions of a Tobacco Product Sales Permit shall not be served concurrently.**

4. The Marion Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefore and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Marion Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense.

12.160 Non-Criminal Disposition

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D ~~or by filing a criminal complaint at the appropriate venue.~~ **Where the penalty calls for a monetary fine not exceeding three hundred (\$300.00) dollars.**

12.170. Separate Violations: Each day any violation exists shall be deemed to be a separate offense.

12.180. Enforcement:

Enforcement of this regulation shall be by the Marion Board of Health or its designated agent(s).

The Board of Health may enforce these regulations or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the **Marion** Board of Health or its designated agent(s) and the Board shall investigate.

Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

Effective Date:

This regulation shall take effect on _____, 2023.